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**FILED**

APR 11 2008

RICHARD W. WIEKING  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

**ADR**

OLIVIA U. TORRES

No.

**CO8-01940**

COMPLAINT FOR FRAUD,  
BAD FAITH, INTENTIONAL  
INFILCTION OF EMOTIONAL  
DISTRESS AND BREACH OF  
CONTRACT

Plaintiff,

vs.

UNUM LIFE INSURANCE COMPANY OF AMERICA

Defendant

/

Comes now plaintiff alleging of defendant as follows:

**Jurisdiction**

1. Jurisdiction over this non-ERISA long term disability insurance case arises on diversity of the parties. 28 U.S. C. 1332. Plaintiff was insured under a disability insurance policy in issue at her place of employment in Alameda, California providing venue in this jurisdiction.

## Facts

2. Plaintiff is insured by UNUM Life Insurance Company of America policy number 00515124-0001.

5                   3. This insurance is offered through the City of Alameda group plan and is not subject  
6 to ERISA because the City of Alameda is a public entity.

8           4. Plaintiff, Olivia Torres became disabled on October 31, 2002, during her  
9 employment by the City of Alameda - Alameda Police Department and while covered under the  
10 policy which provides for payment in the event of disability.

12                   5. Plaintiff remained disabled through the elimination period of the policy, which  
13 ended January 28, 2003.

15 6. The disability plan describes a disabled person:

when UNUM determines that:

17 You are limited from performing the material and substantial duties of your  
18 regular occupation due to sickness or injury; and you have a 20% or more loss  
in your indexed monthly earnings due to the same sickness or injury.

19 After 36 months of payments, you are disabled when UNUM determines that  
20 due to the same sickness or injury, you are unable to perform the duties of any  
gainful occupation for which you are reasonably fitted by education, training or  
experience.

22                   7. Plaintiff applied for and was granted Long Term Disability benefits from the Plan  
23 effective January 29, 2003.

25                   8. Defendant UNUM paid benefits until September 4, 2003, at which time UNUM  
26 declared that Olivia Torres was no longer disabled.

28 8. Olivia Torres appealed UNUM's decision and was ultimately paid benefits through

1 November 19, 2003.

2  
3 9. Olivia Torres elected to participate in Unum's Multistate Claim Reassessment  
4 Process, which tolled the statute of limitations for filing this action.

5  
6 10. On October 19, 2006, an eight page form is sent from UNUM to Olivia Torres  
7 requesting eight pages of information in order to reassess her claim. UNUM only allows 60 days to  
8 gather the eight pages of information.

9  
10 11. On January 17, 2007 plaintiff asked for more time to file her reassessment as she  
11 had moved in late 2006 and was unable to find all the information requested by Defendant UNUM.  
12 Defendant UNUM denied plaintiff's request for additional time to file the reassessment, and  
13 thereafter refused to reassess the claim

14  
15 12. These general allegations are incorporated into each cause of action below.

16  
17 **FIRST CLAIM FOR RELIEF - BAD FAITH**

18  
19 13. Defendant UNUM undertook to insure Olivia Torres against disability and the  
20 associated financial calamity.

21  
22 14. Defendant UNUM acted in bad faith in connection with the termination of  
23 benefits to Ms Torres because:

24  
25 26 A. UNUM failed to take into account Ms Torres medical history along with her Breast  
27 Cancer. UNUM provides a primary diagnosis of depression rather than more accurately stating a  
primary diagnosis of breast cancer.

1 SECOND CLAIM FOR RELIEF - INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS  
23       15. The actions of defendants, as set forth in 1 - 14 above were and are extreme and  
4 outrageous, and were and are known by them to be substantially certain to cause Olivia Torres great  
5 emotional distress. In particular, UNUM abused their rights under the policy by arbitrarily deciding  
6 that Ms. Torres was no longer entitled to benefits on September 4, 2003 and only after appeal  
7 allowing benefits through November 19, 2003.8  
9       16. UNUM has such a history of denying coverage that UNUM entered into an  
10 agreement to reassess claims. The review was under the Regulatory Settlement Agreement"RSA")  
11 between UNUM, insurance regulators, and the Department of Labor ("DOL"). This claim fell into  
12 the reassessment time period.13  
14       17. UNUM set up barriers for filing reassessment claims. They only allowed 60 days  
15 for claimants to present an eight page claim form which included a claimant statement, employment  
16 statement including tax returns, medical information details, other income benefits, Certification,  
17 Conditional Waiver and Release and Authorization. UNUM stated their decision on reassessment  
18 could take as long as twelve weeks. Thus UNUM only offered claimants 60 days to get the  
19 information to UNUM, but UNUM allowed itself two years to send the form..20  
21       18. These acts all were intended to and did cause Ms. Torres grave financial and  
22 emotional distress, and they were all a part of a corporate plan of UNUM to wrongfully deny benefits  
23 to its insureds, in order to force them to file suit in the hope that defendant could then compromise the  
24 claims and cancel the remaining coverage due under the policy.25  
26       19. The actions of the defendant in refusing to approve disability payments to Ms.  
27 Torres was known by them to be substantially certain to vex, injure, harass, and annoy Ms Torres and  
28 was known by defendants to violate her rights. Ms Torres had already lost her mother and sister to

1 breast cancer, causing her great emotional burden in fighting her own battle with breast cancer.

2

3                   20. The action of defendant has been and is causing Ms. Torres great emotional and  
4 financial distress, not only rendering her unable to pay her bills, in a timely fashion, but because the  
5 action of the defendant has aggravated the financial stress and loss of security attendant to her already  
6 existing disability, thereby impairing her ability to manage her illness and minimize the physical  
7 distress which it causes her. Ms Torres suffered not only from breast cancer, but also endured a  
8 painful divorce and had to move to a home that cost less because she could not afford to stay in her  
9 home. She missed the deadline to provide documentation in part because she had to move to a less  
10 expense home and could not find the information during the process of moving.

11

12                   21. As a proximate result thereof, Ms. Torres has been damaged as set forth below.

13

14                   THIRD CLAIM FOR RELIEF - BREACH OF CONTRACT

15

16                   22. The actions of defendants as set forth in 1 - 21 above, defendant UNUM  
17 breached the policy by failing to pay benefits due thereunder, and failing to process claims properly  
18 under the policy.

19

20                   23. Ms. Torres performed substantially all of her obligations under the policy.

21

22                   24. As a proximate result of the foregoing, Ms. Torres has been damaged as set forth  
23 below.

24

DAMAGES

25

26                   25. As a proximate result thereof, plaintiff has been damaged by the loss of benefits  
27 from November 20, 2003 until she becomes disabled or at the end of her lifetime. Her disability  
28 benefits are \$1,667.00 per month. Ms Torres was able to work part time commencing approximately

1 November 2004, but does not still make 80% of her former monthly salary of \$4,110.60. She is  
2 entitled to benefits for one year at \$1,667.00 per month for a total of 20,004. She is also entitled  
3 partial salary according to proof.

4

5 26. On the bad faith claim, Plaintiff has been compelled to retain counsel to collect  
6 the benefits owed, and is entitled to reasonable attorneys fees under ERISA in an amount dependent  
7 upon the extent of litigation required and estimated at \$300,000. through trial. Brandt v Superior  
8 Court 37 Cal. 3d. 813, 693.

9

10 27. Plaintiff, Ms Torres has suffered general damages.

11

12 Wherefore, plaintiff prays for relief as set forth below:

13

14 1. For benefits, past and future, for long term disability, as provided by the terms of  
15 the plan in the amount of \$20,004 partial salary plus interest according to proof;

16

17 2. For general damages of \$100,000 or according to proof;

18

19 3. For attorneys fees of \$300,000 or according to proof;

20

21 4. For such other relief as the court deems just and proper.

22

23 Dated: April 11, 2008

24

  
25 Gayle Godfrey Codiga  
26 Attorney for plaintiff

27

28

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

**I. (a) PLAINTIFFS**

Olivia Torres

**DEFENDANTS**

Unum Life Insurance Company of America

**(b) County of Residence of First Listed Plaintiff** Alameda County  
(EXCEPT IN U.S. PLAINTIFF CASES)

**County of Residence of First Listed Defendant** Hamilton County  
(IN U.S. PLAINTIFF CASES ONLY)  
NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

**(c) Attorney's (Firm Name, Address, and Telephone Number)**

Attorneys (If Known)

Laurence F. Padway, 083914  
Costa Nikoloutsopoulos, 248905  
Law Offices of Laurence F. Padway  
1516 Oak Street, Suite 109 Alameda, CA 94501 Tel: 510-814-6100

**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

1 U.S. Government Plaintiff  3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant  4 Diversity (Indicate Citizenship of Parties in Item III)

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

**PTF** **DEF**  
Citizen of This State  1  1 Incorporated or Principal Place of Business In This State  4  4

Citizen of Another State  2  2 Incorporated and Principal Place of Business In Another State  5  5

Citizen or Subject of a Foreign Country  3  3 Foreign Nation  6  6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

**CONTRACT**  
 110 Insurance  
 120 Marine  
 130 Miller Act  
 140 Negotiable Instrument  
 150 Recovery of Overpayment & Enforcement of Judgment  
 151 Medicare Act  
 152 Recovery of Defaulted Student Loans (Excl. Veterans)  
 153 Recovery of Overpayment of Veteran's Benefits  
 160 Stockholders' Suits  
 190 Other Contract  
 195 Contract Product Liability  
 196 Franchise

**TORTS**  
 310 Airplane  
 315 Airplane Product Liability  
 320 Assault, Libel & Slander  
 330 Federal Employers' Liability  
 340 Marine  
 345 Marine Product Liability  
 350 Motor Vehicle  
 355 Motor Vehicle Product Liability  
 360 Other Personal Injury

**PERSONAL INJURY**  
 362 Personal Injury— Med. Malpractice  
 365 Personal Injury — Product Liability  
 368 Asbestos Personal Injury Product Liability  
 370 Other Fraud  
 371 Truth in Lending  
 380 Other Personal Property Damage  
 385 Property Damage Product Liability

**FORFEITURE/PENALTY**  
 610 Agriculture  
 620 Other Food & Drug  
 625 Drug Related Seizure of Property 21 USC 881  
 630 Liquor Laws  
 640 R.R. & Truck  
 650 Airline Regs.  
 660 Occupational Safety/Health  
 690 Other

**BANKRUPTCY**  
 422 Appeal 28 USC 158  
 423 Withdrawal 28 USC 157

**OTHER STATUTES**  
 400 State Reapportionment  
 410 Antitrust  
 430 Banks and Banking  
 450 Commerce  
 460 Deportation  
 470 Racketeer Influenced and Corrupt Organizations  
 480 Consumer Credit  
 490 Cable/Sat TV  
 810 Selective Service  
 850 Securities/Commodities/ Exchange  
 875 Customer Challenge 12 USC 3410

**PROPERTY RIGHTS**  
 820 Copyrights  
 830 Patent  
 840 Trademark

**SOCIAL SECURITY**  
 710 Fair Labor Standards Act  
 720 Labor/Mgmt. Relations  
 730 Labor/Mgmt. Reporting & Disclosure Act  
 740 Railway Labor Act  
 790 Other Labor Litigation  
 791 Empl. Ret. Inc. Security Act

861 HIA (1395ff)  
 862 Black Lung (923)  
 863 DIWC/DIW (405(g))  
 864 SSID Title XVI  
 865 RSI (405(g))

**FEDERAL TAX SUITS**  
 870 Taxes (U.S. Plaintiff or Defendant)  
 871 IRS—Third Party 26 USC 7609

895 Freedom of Information Act  
 900 Appeal of Fee Determination Under Equal Access to Justice  
 950 Constitutionality of State Statutes

**REAL PROPERTY**  
 210 Land Condemnation  
 220 Foreclosure  
 230 Rent Lease & Ejectment  
 240 Torts to Land  
 245 Tort Product Liability  
 290 All Other Real Property

**CIVIL RIGHTS**  
 441 Voting  
 442 Employment  
 443 Housing/ Accommodations  
 444 Welfare  
 445 Amer. w/Disabilities - Employment  
 446 Amer. w/Disabilities - Other  
 440 Other Civil Rights

**PRISONER PETITIONS**  
 510 Motions to Vacate Sentence Habeas Corpus:  
 530 General  
 535 Death Penalty  
 540 Mandamus & Other  
 550 Civil Rights  
 555 Prison Condition

**IMMIGRATION**  
 462 Naturalization Application  
 463 Habeas Corpus — Alien Detainee  
 465 Other Immigration Actions

**APPEAL TO DISTRICT**  
 6 Multidistrict Litigation  
 7 Judge from Magistrate Judgment

**VI. ORIGIN**  
 1 Original Proceeding  
 2 Removed from State Court  
 3 Remanded from Appellate Court

(Place an "X" in One Box Only)

Transferred from

4 Reinstated or Reopened  
 5 another district (specify)

**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
28 U.S.C. 1332

Brief description of cause:

Denial of long-term disability benefits

**VII. REQUESTED IN COMPLAINT:**

CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23

DEMAND \$ 20,004.00

CHECK YES only if demanded in complaint:  
JURY DEMAND:  Yes  No

**VIII. RELATED CASE(S) IF ANY**PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE  
"NOTICE OF RELATED CASE".**IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2)  
(PLACE AND "X" IN ONE BOX ONLY)** SAN FRANCISCO/OAKLAND SAN JOSE

DATE  
April 11, 2008

SIGNATURE OF ATTORNEY OF RECORD

*Sage Bradley Codriga*

**INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44****Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

**I. (a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

**(b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

**(c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

**II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

**III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

**IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

**V. Origin.** Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

**VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service

**VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

**VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

**Date and Attorney Signature.** Date and sign the civil cover sheet.